321; *Godwin* v. *Telephone Co.*, 136 N. C. 258. But previous lawbreaking is not *per se* a ground for exclusion. See *Coppin* v. *Braithwaite*, 8 Jur. 875; *Lucia* v. *Omel*, 46 N. Y. App. Div. 200. But for the principal case it would seem clear that the law prefers the necessities of one member of the traveling public to the sensibilities of others. *Chicago & N. W. Ry. Co.* v. *Williams*, 55 Ill. 185; *Brown* v. *Memphis & C. R. Co.*, 7 Fed. 51. And in spite of a few *dicta* the mere interest of the public servant should be no excuse, cases apparently *contra* being due to the fact that he need not allow the transaction of business on his premises. *Ford* v. *East Louisiana R. Co.*, 110 La. 414. But see *Jencks* v. *Coleman*, 2 Sumn. (U. S.) 221; *State* v. *Steele*, 106 N. C. 766. Engaged in a public undertaking, he can justify his failure to perform it only on grounds in which the public is interested. The principal case does not satisfy this test.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORMS — "THE INSURED" TO FURNISH PROOFS OF LOSS. — A mortgagor took out insurance payable to the mortgagee as his interest might appear. The policy provided that the mortgagee's interest should not be invalidated by any act or neglect of the mortgagor, and that "the insured" should furnish proofs of loss within a certain time. *Held*, that recovery by the mortgagee is not barred by the lack of proofs within the stipulated time. *Heilbrun* v. *German Alliance Insurance Co.*, 44 N. Y. L. J. 627 (N. Y. App. Div., Oct. 1910).

For a discussion of the principles involved, see 23 HARV. L. REV. 311.

INSURANCE — DEFENSES OF INSURER — EXEMPTION CLAUSE. — A fire insurance policy exempted the company from liability for loss caused directly or indirectly by certain causes; or for loss occasioned by or through earthquake. A statute provided that, when a peril is specially excepted in a policy, a loss which would not have occurred *but for* that peril is excepted, although the immediate cause of the loss was a peril not excepted. An earthquake caused a fire which spread to and destroyed the plaintiff's property. *Held*, that the plaintiff can recover on the policy. *Pacific Heating & Ventilating Co.* v. *Williamsburg City Fire Ins. Co. of Brooklyn*, 111 Pac. 4 (Cal.).

If the earthquake clause stood alone the company would not be liable. *Insurance Co.* v. *Boon*, 95 U. S. 117. See *Baker & Hamilton* v. *Williamsburgh, etc. Ins. Co.*, 157 Fed. 280. The court argues, however, that the use of the words "directly or indirectly" before the semicolon, coupled with their omission after it, has narrowed the scope of this exemption. The statute provides a strict rule for the construction of such a clause. The court construes the policy without reference to the statute, and then avoids it by saying that the excepted peril, fire caused by earthquake, never occurred, apparently because the fire did not originate on the plaintiff's premises. But where the excepted peril was fire from explosion, the United States Supreme Court held that it had occurred even though the explosion occurred and the fire originated in another building than the one insured. *Insurance Co.* v. *Tweed*, 7 Wall. (U. S.) 44. In an action on a similar policy it was held that the omission of "directly or indirectly" after the semicolon had waived the benefit conferred by the statute. *Williamsburgh, etc. Ins. Co.* v. *Willard*, 164 Fed. 404. The interpretation seems extreme.

INSURANCE — EMPLOYERS' LIABILITY INSURANCE — "INJURIES ACCIDENTALLY SUFFERED." — An employee contracted glanders while on duty, owing to the fault of his employer, and recovered damages from him. The employer held an employers' liability insurance policy, covering loss "for damages on account of bodily injuries accidentally suffered by employees of assured while on duty." *Held*, that the employer can recover from the insurance company

for the damages paid the employee. *Hood & Sons* v. *Maryland Casualty Co.*, 206 Mass. 223. See NOTES, p. 221.

INSURANCE — RIGHTS OF BENEFICIARY — MURDER OF INSURED BY BENEFICIARY. — After murdering the insured, the beneficiary of a life insurance contract sought to recover from the insurer the amount of the policy. *Held*, that he cannot recover. *Filmore* v. *Metropolitan Life Ins. Co.*, 92 N. E. 26 (Oh.).

After the murder of the insured by the beneficiary the insurance company admitted liability upon the policy. The administrator of the insured and the administrator of the beneficiary each claimed the proceeds. *Held*, that the administrator of the insured is entitled to recover. *Anderson* v. *Life Insurance Co. of Virginia*, 67 S. E. 53 (N. C.). See NOTES. p. 227.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — FOREIGN CORPORATION PREPARING OUTSIDE STATE AND EXHIBITING IN IT ADVERTISEMENT OF LOCAL BUSINESS. — A foreign corporation contracted with a resident of Michigan to prepare and exhibit for three years in Michigan a sign, bearing an advertisement of the resident's business. The sign was to be prepared outside the state. In an action by the corporation for the sum due it on the contract after two years' exhibition, the defendant showed that the plaintiff had not fulfilled the requirements for doing business laid down by a statute which did not apply to interstate commerce. *Held*, that the transaction does not constitute interstate commerce. *Imperial Curtain Co.* v. *Jacob*, 127 N. W. 772 (Mich.). See NOTES, p. 230.

JUDGMENTS — COLLATERAL ATTACK — PUNISHMENT FOR CONTEMPT. — In contempt proceedings, the defendant contended that there were not sufficient grounds for granting the order which he had disobeyed. *Held*, that this defense is invalid. *Starkweather* v. *Williams*, 76 Atl. 662 (R. I.).

If a decree is utterly void, the party affected is justified in disregarding it, and may attack its validity when prosecuted for contempt. *Dodd* v. *Una*, 40 N. J. Eq. 672. A decree may be void because the court has no jurisdiction over the parties or subject matter. *In re Sawyer*, 124 U. S. 200. Or, a court having authority to hear the cause may grant relief of a kind that lies without its jurisdiction. *McHenry* v. *State*, 91 Miss. 562. When, however, the court has jurisdiction, the fact that an order was erroneously or improvidently issued does not justify disobedience. The proper remedy is an appeal on the merits. *Erie Ry. Co.* v. *Ramsey*, 45 N. Y. 637; *Clark* v. *Burke*, 163 Ill. 334.

LANDLORD AND TENANT — ASSIGNMENT AND SUBLETTING — SUB-LESSEE'S BREACH OF COVENANT TO REPAIR: MEASURE OF DAMAGES. — In 1855, A leased premises for ninety-nine years to B, who covenanted to repair. In 1887 B sublet to C, who covenanted to repair in the same terms as those of the head lease. In 1908 A sued B for failure to repair, and B, in addition to damages, paid a fine and costs to avoid a forfeiture. B thereupon sued C on his covenant, and sought to include in his damages the costs of the former action. *Held*, that he cannot recover the costs. *Clare* v. *Dobson*, *London Times*, Oct. 21, 1910, p. 3 (K. B. D.).

If C's covenant were to perform the covenant in the head lease, it would be a covenant of indemnity and B's costs would be recoverable. *Hornby* v. *Cardwell*, 8 Q. B. D. 329. But a covenant by a sub-lessee to repair, although in the terms of the lessee's covenant, is not a covenant of indemnity. *Pontifex* v. *Foord*, 12 Q. B. D. 152. The rule of damages, however, in breach of contract covers damages which might reasonably have been contemplated by both parties when the contract was made. *Hadley* v. *Baxendale*, 9 Exch. 341. Under